IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8955 of 1992

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAMJIBHAI MAPABHAI

Versus

COLLECTOR

Appearance:

MR SURESH M SHAH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 10/11/2000

C.A.V. JUDGEMENT

(Per Chief Justice Mr DM Dharmadhikari)

#. This petition under Article 227 has been preferred against the impugned orders of the Revenue Authorities finally maintained by the order of Additional Chief

Secretary, Revenue Department of State of Gujarat by the order dated 24-1-1991 (Annexure F).

#. The brief facts leading to the petition are as under:-

The petitioner owns agricultural land bearing Survey No. 301 in Rajkot within the urban agglomeration. According to him, he erected only a farm-house in the agricultural land.

#. He was served with a show cause notice issued by the Deputy Collector, Rajkot alleging that he has allowed the agricultural land to be used for residential houses without obtaining due permission in accordance with Section 65 of the Bombay Land Revenue Code, 1879 (for short `the Code'). By the said notice of the Deputy Collector, Rajkot, he was called upon to appear before the Authority on 25-5-1987 at 11.30 a.m.

#. After the petitioner appeared and submitted his reply, the Deputy Collector, by his order dated 5-1-1988 (Annexure B) came to a finding that Jamnagar Cooperative Housing Society has raised certain construction on the land. According to the Deputy Collector, such construction made without permission was clear violation of Section 65 of the Code. He, therefore, imposed on the petitioner a penalty of Rs. 11,896.80ps and conversion tax assessed Rs.3617.75ps. He also directed that the illegally raised structure be removed.

#. Aggrieved by the order of the Deputy Collector, an Appeal was preferred to Collector, Rajkot, who rejected the same by order dated 3-3-1990.

#. The petitioner then approached the highest Revenue Authority, i.e., Special Secretary (Revenue) in the State of Gujarat, who also by the impugned order dated 24/25-1-1991 (Annexure F) dismissed the Revision Application filed by the petitioner and maintained the orders of the lower Revenue Authorities including the original order of Deputy Collector, Rajkot resulting into notice dated 25-11-1992 issued by City Mamlatdar for recovery of revenue dues against the petitioner.

#. Learned counsel for the petitioner has raised several contentions in assailing the orders of the Revenue Authorities. The first contention advanced is that the petitioner had merely raised a farm-house and the illegal construction raised by the Cooperative Society without his permission was an unauthorised encroachment for which

he had filed a Civil Suit against the Society. It is contended that the finding of the Revenue Authorities, therefore, that the petitioner was guilty of putting the land to non-agricultural use without permission is erroneous.

#. The first contention which is based on facts cannot be accepted because such plea based on filing of a civil suit was not specifically raised before any of the Revenue Authorities. If the petitioner has filed a suit against the society and contended therein that the unauthorised construction was not made by the petitioner, but, by the said society, the petitioner's remedy against the said society is to claim damages in civil law against the Society. When the counsel was asked as to what is the stage of the civil suit, he was unable to state as to whether the suit filed has been decreed or dismissed. The challenge to action of the Revenue Authorities on the above plea of pendency of civil suit against the Cooperative Society, therefore, cannot be entertained.

#. The second ground urged is that the petitioner was served with show cause notice proposing imposition of fine or penalty, but, apart from imposing penalty, conversion tax has also been levied for alleged unauthorised diversion of land for non-agricutlural use. It is submitted that levying of conversion tax without issuing a show cause and grant of hearing for the purpose is against breach of principles of natural justice and the whole action deserves to be set aside. The reliance is placed on a decision of learned Single Judge of Gujarat High Court in Kesarbhai Bhagwanbhai v. State of Gujarat 1996(3) GCD 181 (Guj).

##. The second ground urged also does not appear to be of any substance. As appears from the contents of the show cause notice, it was issued under Section 66 for violation of the provisions of Section 65 of the Code. Section 66 in its opening part itself provides that where a land is put to use without permission and in contravention of Section 65, without prejudice to the occupant's liability to pay the new assessment leviable under section 48 or the conversion tax leviable under Section 67-A, he could be made liable to pay fine as a penalty. The opening part of Section 66 making reference to levy of conversion tax in addition to land revenue and fine needs to be quoted:-

"66. Penalty for using land without permission.-If any land referred to in Section 65 or Section 65-A be used for any purpose other

than the purpose for which such land is assessed or held without the permission of the Collector being first obtained, or before the expiry of three months referred to in section 65 or despite refusal of permission during the said period of three months, then, without prejudice to the occupant's liability to pay the new assessment leviable under section 48 or the conversion tax leviable under section 67-A. -

(a) xx xx xx

(b) xx xx xx"

##. As the petitioner was served with a show cause notice under Section 66 for contravention of Section 65, in terms of provisions of Section 66 itself, conversion tax was leviable on him, as a result of change of user of the land. The petitioner cannot legitimately complain that he had no opportunity to show cause against levy of conversion tax. The decision of the learned Single Judge in the case of Kesarbhai (supra) is, therefore, of no assistance to the petitioner.

##. Lastly, he submitted that the Special Secretary (Revenue) has heard the Revision and reserved the order on 17-9-1990. Thereafter, the petitioner had been making oral enquiries and in writing on 29-12-1991 and 21-11-1992, but, was never informed about the passing of the judgment. He came to know about the final order only when he was served with recovery notice dated 25-11-1992 from City Mamlatdar, Rajkot. Then, he applied for a certified copy, which was furnished to him on 30-11-1992 and from that he came to know that the Secretary had passed the order in Revision on 25-1-1991. It is submitted that only on the ground of long delay in delivery of judgment after the hearing of the case, the order of the Special Secretary (Revenue) deserves to be quashed. Reliance is placed on the observations of the Supreme Court in the case of Bhagwandas Fatechand Daswani and others v. H.P.A. International and others AIR 2000 SC 775. I have gone through the judgment of the Supreme Court on which reliance has been placed. The Supreme court has deprecated the practice of delay in delivery of judgments after conclusion of hearing. It has been observed that such long delay is bound to affect the decision of the case on merits. The Supreme Court had remanded the matter for a fresh decision. In the instant case before me, because of long delay in delivery of judgment of the Revisional Authority, a request has been made on behalf of the petitioner that the case be remanded to revisional authority for a fresh decision. Such a request could have been accepted on the

observations of the Supreme court, but, I have found that the orders of the lower Revenue Authorities were in accordance with law. There was clear violation of the provisions of Section 65 of the Code committed by the petitioner. In my considered opinion, remand of the case at this distance of time to the Revisional Authority would be an exercise in futility and would further delay the proceedings.

For the aforesaid reasons, the request for remand of the case to Special Secretary (Revenue) cannot be allowed.

Consequent to the discussion aforesaid, the petition fails and is dismissed.

Interim order made shall stand vacated. Rule is discharged. I, however, make no order as to costs.

(D.M. Dharmadhikari, C.J.)

[sndevu]